

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of Section 224 of the Act;	)	WC Docket No. 07-245
Amendment of the Commission's Rules	)	
and Policies Governing Pole Attachments	)	RM-11293
	)	
	)	RM-11303
	)	

**REPLY COMMENTS OF THE  
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION**

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The National Rural Electric Cooperative Association ("NRECA") appreciates this opportunity to reply to comments submitted in response to the Federal Communications Commission's ("Commission" or "FCC") published February 6, 2008 Notice of Proposed Rulemaking ("NPRM")<sup>1</sup> regarding the amendment of the Commission's rules and policies governing pole attachments. While 47 U.S.C. Section 224(a)(1) of the Telecommunications Act of 1996 ("the Act")<sup>2</sup> expressly exempts electric cooperatives from the Commission's pole attachment jurisdiction, NRECA's response is warranted due to the potential impact the proposed amendments may have upon member cooperatives. In fact, past experience with cable television ("CATV") and incumbent local exchange carrier ("ILEC") attachers makes apparent that the negotiations, operations and joint use relationships between unregulated pole owners and the attaching entities are regularly influenced by the federal regulatory scheme. For example, attaching entities argue that the federal standards should set the benchmarks or serve as a *de facto* model when negotiating pole attachment agreements with exempt electric cooperatives.

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<sup>1</sup> *In re Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments*, 72 Fed. Reg. 24238 (released February 6, 2008).

<sup>2</sup> 47 U.S.C. § 224, *et. seq.* (1996)

For many reasons, some of which are discussed herein, NRECA does not believe that either the Act or the Commission's interpretation of it are in harmony with the realities pole owners face. Instead, at least some of the federal pole attachment provisions are more reflective of historical political accommodations rather than practical approaches to administering pole attachments. Despite this inapplicability of Federal provisions to rural electric cooperatives ("Cooperatives"), attachers commonly claim in negotiations that the "proper" or "right" way to address a certain issue is the way that the Commission has previously approached such an issue. Attachers argue that the Commission's decisions set *de facto* parameters of how pole attachment matters should always be viewed. In fact, many times attachers refuse to negotiate in good faith, choosing instead to unilaterally demand that Cooperatives relent to terms and conditions identical to Commission policy.

In addition to utilizing the sword of Commission regulations in negotiations with Cooperatives, recently CATV and telecommunication interests have attempted to take the Act's general construct and urge it as a new law in several states including Georgia and Alabama. Not satisfied with the subsidies they receive from IOU's at the federal level, the attaching entities sought even greater rights in these recent efforts. Fortunately, their efforts have been rebuffed. The idea of giving attaching entities further so-called "*de facto*" or "benchmark" protections that will work their way into negotiations between NRECA members and attaching entities is, at best, unappealing.

There is also a pragmatic spill-over beyond the Act's express jurisdictional reach should the Commission choose to adopt the proposed safety and reliability "best practices." There is a workforce overlap between the contractors employed by attachers

to work on the poles of regulated IOUs and those who work on the poles of exempt Cooperatives. Therefore, any “one-size-fits-all” safety and reliability standards instituted by the Commission could very well affect all electric utility pole owners. As a result, NRECA wishes to emphasize to the Commission its safety and reliability concerns, as well as the state of unsafe construction practices by CATV and telecommunications attachers as conveyed by our members. In short, the Commission should not even wade into the waters of pole design, construction and reliability – much less dive in as urged by the various attaching entities.<sup>3</sup> Instead, safety and reliability standards should remain the province of the specific utilities and the states charged with protecting the nation’s pole infrastructure.

NRECA did not submit initial comments based on the belief that the various regulated parties would accurately depict the nature of pole license/joint use relationships. Having reviewed the initial comments, however, it is imperative for NRECA to provide the Commission with the information from its members to correct several of the positions taken by third-party attachers. Several of the commenting attaching entities have provided the Commission with an inaccurate picture of safety and reliability issues. The submissions by the utility pole owners, in contrast, are “real-world” and wholly consistent with the experiences of NRECA and its members. On this

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<sup>3</sup> The Commission has previously acknowledged that it lacks the expertise to regulate extremely local matters. See *Arkansas Cable Telecommunications Association v. Energy Arkansas, Inc.*, 21 FCC Rcd 2158, 2161 (2006) (“In adopting rules governing pole attachments, the Commission expressly declined to establish a comprehensive set of engineering standards that would govern when a utility could deny access to its poles based on capacity, safety, reliability, or engineering concerns.”); *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 FCC Rcd 15499, 16073 (1996) (“In addition to operating under federal, state, and local requirements, a utility normally will have its own operating standards that dictate conditions of access. Utilities have developed their own individual standards and incorporated them into pole attachment agreements because industry-wide standards and applicable legal requirements are too general to take into account all of the variables that can arise ... [W]e conclude that state and local requirements affecting attachments are entitled to deference even if the state has not sought to preempt federal regulations under section 224(c).”).

point NRECA is here to say “us too” – meaning that the IOUs’ experiences with unsafe construction practices of attaching entities comport with the experiences of NRECA’s members.

### **BACKGROUND**

NRECA is the not-for-profit, national service organization representing nearly 930 not-for-profit, member-owned rural electric systems, serving 39 million customers in 47 states.<sup>4</sup> Poles owned by NRECA members help comprise the backbone of the nation’s critical infrastructure. NRECA estimates that Cooperatives own and maintain, at considerable cost and burden, over 40 million utility poles deployed at the rate of approximately twenty poles per mile. Overall, Cooperatives own and maintain 2.5 million miles of line, or 42% of the nation’s electric distribution line, covering three quarters of the nation’s landmass (about 15% of that line is underground and has no poles) and are expanding at the estimated rate of 700,000 poles annually.

However, given their location and low population density areas, Cooperatives still average fewer than seven customers per mile of electric distribution line. Low population densities coupled with the issue of traversing vast expanses of remote and often rugged topography presents unique financial and technological barriers for the deployment of broadband and high speed Internet connections to some rural communities. While Cooperatives applaud the Commission’s efforts to promote the deployment of broadband in rural communities, such expansion should not compromise the integrity of the nation’s electric distribution system, nor should it arrive at the expense of rural electric consumers, a significant segment of whom already struggle to pay their electric bills.

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<sup>4</sup> NRECA is also a member of the Critical Infrastructure Communications Coalition and the United Telecom Council.

## DISCUSSION

### **I. POLE ATTACHMENT RULES DO NOT APPLY TO RURAL ELECTRIC COOPERATIVE UTILITIES**

In response to the Commission's request asking whether it should adopt national rules governing the terms and conditions for obtaining and maintaining access to poles, the Commission was asked by one attacher to clarify "the applicability of pole attachment rules to rural utilities . . ."<sup>5</sup> The short and clear answer is that the FCC's pole attachment rules have no direct application to rural utilities that are cooperatively organized. Historically, electric cooperatives have been explicitly exempted from the FCC's pole attachment jurisdiction.<sup>6</sup>

Congress enacted the Act in 1978 to "provide for the regulation of utility pole attachments."<sup>7</sup> The Act provides that the term "utility . . . does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State." As noted by the Senate Committee, the Act does not apply to any "cooperative electric or telephone utility." S. Rep. No. 95-580, at 3 (1977), reprinted in 1978 U.S.C.C.A.N. 109, 111. Explaining this cooperative exemption, the committee stated:

Because the pole rates charged by municipally owned and cooperative utilities are already subject to a decisionmaking process based upon constituent needs and interests, [the Act] as reported, exempts these utilities from F.C.C. regulation.

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<sup>5</sup> See Comments of Time Warner Telecom Inc., One Communications Corp. and Comptel, WC Docket No. 07-245, RM-11293, RM-11303 (filed Mar. 10, 2008) ("TWTC Initial Comments"); *see also* TWTC Initial Comments at 18.

<sup>6</sup> 'Sec. 224. Pole Attachments, (a) Definitions, As used in this section: (1) The term "utility" means any person who is a local exchange carriers or an electric, gas, water, steam, or other public utility, and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for any wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or State.'

<sup>7</sup> Communications Act Amendments of 1978, Pub. L. No. 95-234, 92 Stat. 33; hereinafter "1978 Act"



In 1996, Congress passed significant amendments to the Act, in some ways expanding the Commission's jurisdiction. Congress left in place, however, the clear mandate that "regulated utilities" "do[es] not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State."<sup>8</sup>

Thus, to answer the jurisdictional question posed to the Commission – Cooperatives are unambiguously and specifically exempted from the FCC's pole attachment regulations but may be subject to state regulation if a state asserts jurisdiction.

## **II. COOPERATIVES CHARGE COST BASED RATES**

Pole attachment rates set by Cooperatives are subject to constituent needs and interests. Additionally, to become and remain a qualified "cooperative" under federal tax law, an electric cooperative must operate "at cost."<sup>9</sup> Cooperatives, must, therefore, neither operate "for profit [n]or below cost."<sup>10</sup> To protect a Cooperative's status as a "cooperative" under federal tax law, any provider of electric, telephone, cable television, telecommunications, or similar services using the cooperative's poles, ducts, conduits, or rights-of-way should fully compensate the cooperative for the Cooperative's costs associated with such use.

Consequently, even though Cooperatives are exempt from provisions of the Act, they are constrained by federal tax law when it comes to setting pole attachment rates. Fears that Cooperatives will raise pole attachment rates if the Commission raises its

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<sup>8</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56; hereinafter "the Act" (codified as amended at 47 U.S.C. § 224(a)(4)).

<sup>9</sup> *Puget Sound Plywood, Inc. v. Commissioner*, 44 T.C. 305, 308 (1965), acq., 1966-1 C.B. 3; *Buckeye Power, Inc. v. United States*, 38 Fed. Cl. 154 (Fed. Cl. 1997); I.R.S. Announcement 96-24 § (12)22.2(3)(d), 1996-16 I.R.B. 35 (1996); and Michael Seto and Cheryl Chasin, *General Survey of I.R.C. 501(c)(12) Cooperatives and Examination of Current Issues § 7(B), Exempt Organizations Continuing Professional Education Technical Instruction Program for FY 2002* (Oct. 2001).

<sup>10</sup> I.R.S. Announcement 96-24, *supra*, and Seto, *supra*.

standard<sup>11</sup> are unwarranted because Cooperatives will still be required to charge cost-based pole attachment rates. In fact, in its initial comments the Mississippi Cable Telecommunications Association (“Mississippi Cable”) infers that the Commission’s mere inquiry of instituting a unified broadband rate has already resulted in rate increases of more than 100 percent.<sup>12</sup> While that may sound alarming, third party attachers commonly refer to pole rate increases in large percentages rather than in specific dollar amounts when the actual rate increase is neither unreasonable nor unjust. For example, framing an escalation in pole attachment rates as a 200% increase paints a markedly more unjust picture than the raising of rates from \$4 to \$8 after a decade long pole attachment agreement expires. Lastly, without providing any specific information, Mississippi Cable further surmises that the rate increases were “without corresponding increases in underlying costs.”<sup>13</sup> This illustrates the third-party attachers’ blind reliance on the heavily subsidized FCC cable rate as the *de facto* standard when comparing it against the cost-based rates Cooperatives are required to charge. The FCC cable formula does not reflect the actual costs to pole owners of providing pole space (an outdated political decision by Congress as reflected in the legislative history). As such, comparing Cooperative’s rates with the FCC cable rate (whether by percentage or otherwise) is akin to comparing apples and oranges.

### **III. THE NEW BROADBAND RATE SHOULD ELIMINATE SUBSIDIES**

The Commission has tentatively concluded that all categories of broadband Internet access service providers should pay a unitary pole attachment rate set higher than the current FCC cable rate, yet no greater than the FCC telecommunications rate (the

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<sup>11</sup> See Mississippi Cable Comments at p. 3, ¶ 1.

<sup>12</sup> *Id.* at p. 3 ¶ 3.

<sup>13</sup> *Id.*

“Broadband Rate”).<sup>14</sup> The Commission now seeks comment on the appropriate level of that uniform broadband rate. While the Broadband Rate will not directly apply to Cooperatives, a number of states have already certified that they regulate pole attachments and that number has the potential to grow significantly.<sup>15</sup> Ultimately, however, the Broadband Rate arising from this proceeding may indirectly affect exempt Cooperatives to the extent certifying states look toward or apply the FCC rate setting formula. The Broadband Rate may also affect the rates sought by CATV and/or telecommunications entities’ significant state legislative efforts to have exempt Cooperatives’ pole attachments regulated in those states. Finally, the Broadband Rate may also affect the rates sought by CATV and/or telecommunications entities in negotiations with exempt Cooperatives.

Mindful of the federal cost-based restrictions on its members, NRECA urges the Commission to adopt a Broadband Rate that fully allocates the costs relating to pole ownership and eliminate the current subsidies found in both the FCC cable and telecommunications rates. NRECA agrees with the Coalition of Concerned Utilities<sup>16</sup> that neither the FCC’s current cable nor telecommunications rate fairly or fully compensates electric utilities for the costs associated with pole attachments. Presently, electric utilities bear the entire cost and burden of building and maintaining their pole distribution systems. NRECA urges the Commission to adopt a Broadband Rate that eliminates the subsidies enjoyed by cable and telecommunications attachers and require

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<sup>14</sup> NPRM at ¶ 36.

<sup>15</sup> As discussed herein, a concerted effort is underway by attacher entities to convince several states to regulate the pole attachments on Cooperative owned poles and grant the same (or more favorable) subsidies to those attachments.

<sup>16</sup> See Comments of the Coalition of Concerned Utilities, WC Docket No. 07-245, RM-11293, RM-11303 (filed Mar. 7, 2008) (“Concerned Utilities Comments”) at III(A)(1).

that all costs associated with pole ownership and maintenance be fully allocated equally by all attachers.<sup>17</sup>

#### **IV. “ONE-SIZE-FITS-ALL” APPROACH TO SAFETY AND RELIABILITY IS IMPRACTICABLE, UNWORKABLE AND DANGEROUS TO CRITICAL INFRASTRUCTURE**

The Commission asks the appropriateness of imposing specific, nationwide “best practices” regarding a number of issues raised in the Fibertech petition regarding terms and conditions of access to pole attachments.<sup>18</sup> Utility infrastructures are robust, reliable systems that have routinely demonstrated an ability to survive severe storms and other disasters.<sup>19</sup> One size fits all regulation is a dangerous notion advanced by attachers with no experience designing and maintaining such infrastructures, not the pole owners. Adoption of specific, nationwide best practices would assuredly compromise the safe and reliable operation of electric distribution networks and the safety of those people who work on, in or around such facilities.

NRECA provides below several concrete examples of why the one size fits all proposal simply will not work and why the Commission should stay away from the extremely nuanced and technical arena of pole construction standards and safety and reliability management. These examples are gleaned from the real life experiences of NRECA members Sumter Electric Membership Corporation (“Sumter EMC”);<sup>20</sup> Jackson

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<sup>17</sup> In this regard, the assertion by several IOU commenters that the Commission adopt a “tweaked” telecom rate makes sense.

<sup>18</sup> NPRM at ¶ 37.

<sup>19</sup> See the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, *Report and Recommendations to the F.C.C.*, note 2 at p. 12 (June 12, 2006) (“Katrina Report”).

<sup>20</sup> NRECA member Sumter EMC provides energy to more than 19,000 customers in all parts of eleven counties in Southwest Georgia. Sumter EMC owns more than 50,000 electrical distribution poles, with more than 12,200 of those poles currently having at least one attachment by a third-party.

Electric Membership Corporation (“Jackson EMC”);<sup>21</sup> GreyStone Electric Membership Corporation (“GreyStone EMC”);<sup>22</sup> Covington Electric Cooperative, Inc. (“CEC”);<sup>23</sup> and Joe Wheeler Electric Membership Corporation (“Joe Wheeler”)<sup>24</sup> (collectively the “Members”). Specifically, these examples provide the Commission with common, real-world examples (something lacking in the various comments filed by the attaching entities) of significant code/specification violations that jeopardize the safety and reliability of the nation’s pole networks.

The examples provided herein include violations of the National Electric Safety Code (“NESC”), Rural Utilities Service (“RUS”) construction specifications, and utility specific standards (*e.g.*, spacing violations, road clearance violations, guy and anchoring violations, etc.). Many of the examples relate to overlashing practices, an increasingly common occurrence that, without prior notice and appropriate safeguarding, can and does create problems for electric utility pole owners. On this point in particular, it seems as though the attaching entities’ initial comments to the Commission take their furthest departure from reality. The attaching entities seem to trivialize the practice as simplistic and devoid of engineering impact. To the contrary, overlashing creates a significant

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<sup>21</sup> NRECA member Jackson EMC is one of the largest electric cooperatives in the United States. Jackson EMC serves approximately 185,000 residential customers and 15,000 commercial and industrial customers in 10 metro Atlanta and northeast Georgia counties. Jackson EMC has more than 178,000 electrical distribution poles, with more than 66,000 of those poles having at least one attachment by another party.

<sup>22</sup> Founded in 1936, NRECA member GreyStone Power serves some or all of eight metropolitan Atlanta counties. To provide service to more than 100,000 members, GreyStone Power owns more than 89,000 electrical distribution poles, with more than 55,000 of those poles having at least one attachment.

<sup>23</sup> NRECA member CEC provides energy and services to rural communities in South Alabama. CEC’s more than 2,600 miles of line transmits electrical service to more than 22,500 meters in parts of six counties. CEC has approximately 55,000 electric distribution poles, with more than 24,952 of those poles having at least one attachment by a third party.

<sup>24</sup> NRECA member Joe Wheeler provides electricity to residential, commercial, industrial and agricultural members in two counties in north Alabama. Joe Wheeler serves over 31,000 Alabamians through more than 42,235 meters. Joe Wheeler’s distribution network covers 4,170 miles and has 75,149 distribution poles, of which 40,781 have at least one third party attacher.

loading and safety problem on the pole just as any new attachment does, even more so as the host bundle size increases. There is no rationale that can support the notion that these additional attachments should not be pre-engineered before being thrown up in a race to get to the next customer.

**A. One Size Does Not Fit All**

In essence, CATV and ILEC attachers urge the Commission to adopt a generic approach to safety and reliability. For example, Time Warner Telecom, Inc. urges the Commission to adopt “national rules governing the terms and conditions for obtaining and maintaining access to poles.”<sup>25</sup> Similarly, Fibertech asks the Commission to “codify standard practices” governing pole access.<sup>26</sup> As urged by the IOU pole owners, the Commission should reject these requests.

The design, construction and safety practices a pole owner must employ vary greatly from region to region, from state to state and from utility to utility. Looking at just two states provides an illustrative example: the soil in North Alabama and North Georgia is heavy in clay and in certain areas very rocky. By contrast, the soil in South Alabama and South Georgia is very sandy and loose.<sup>27</sup> While the NESC does not have a standard for separation of guy anchors, CEC, located in South Alabama, given their local conditions, requires a minimum of just under 3’ separation.<sup>28</sup> Given its’ experiences with the loose, sandy soil underlying its pole network, Sumter EMC, located in South Georgia, requires five feet of separation between the attacher and the utility anchors.<sup>29</sup> In addition, RUS construction specifications specify minimum anchor separation requirements, as

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<sup>25</sup> See Initial Comments of Time Warner Telecom Inc., One Communications Corp., and COMPTTEL (referred to herein as “TWTC’s Initial Comments”), p. 14.

<sup>26</sup> See Initial Comments filed by Fibertech, pp., i, 4.

<sup>27</sup> See Exhibit A, Declaration of Bert Champion, ¶ 13.

<sup>28</sup> *Id.*

<sup>29</sup> See Exhibit B, Declaration of Rene Smith, ¶ 12.

indicated in RUS guide drawings E2.2G and E2.3G. Anchors installed without the requisite distance between them will pull upward in the same cone-shaped volume of soil.<sup>30</sup> As such, if not properly spaced, the anchors will fail.<sup>31</sup> This problem is particularly acute in sand. Where anchors fail, poles are put under incredible stress from out-of-balance attachment loads and can snap or fall, especially in wind/storm conditions. Photographs 1 - 2 attached as Tab 2 to the Declaration of Bert Champion (Exhibit A) and photographs attached as Tabs 1 and 2 to the Declaration of Rene Smith (Exhibit B) demonstrate the necessity of localized, stringent standards regarding the separation of guy anchors – one size does not fit all.

The need for variances in roadway clearances is another example why utilities must have the right to adopt standards more stringent than the NESC and why uniformity cannot be mandated. The NESC requires 15'5" roadway clearance.<sup>32</sup> In CEC's service area (South Alabama), the roadways get heavy traffic from overloaded log trucks working in the local timber industry.<sup>33</sup> There is also increasing traffic of over-sized farm machinery (*e.g.*, cotton combines and peanut pickers).<sup>34</sup> CEC has experienced several instances where these mainstays in its locality-specific economy have pulled down poles that have clearances adequate to meet NESC and RUS standards.<sup>35</sup> As a result, CEC must enforce a pragmatic higher standard.<sup>36</sup> This is consistent with NESC Table 232-1 footnote 26 which provides: "When designing a line to accommodate oversized vehicles, those clearance values shall be increased by the difference between the known height of

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<sup>30</sup> See Champion Declaration, ¶ 13.

<sup>31</sup> *Id.*

<sup>32</sup> See NESC, Rule 232.

<sup>33</sup> See Champion Declaration, ¶ 14.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

the oversized vehicle and 14 feet.”<sup>37</sup> Today’s over-sized farm machinery exceeds this reference component height by several feet – a problem not likely to be encountered in urban areas.

CEC also requires a more stringent standard with regard to pole separation requirements. Specifically, given its familiarity with local contractors utilized by attachers, CEC requires strict adherence to a separation of 40” between the lowest power conductor and the highest communications attachment. While the NESC recognizes certain exceptions that can reduce this separation to as little as 30” – CEC does not. CATV and telecommunications contractors should not be making decisions in the field as to the applicability of NESC exceptions based on the identification of power facilities – the consequences of a mishap are simply too severe.<sup>38</sup>

Similar to CEC’s unique safety concerns, the coastal areas of Alabama and Georgia face location specific safety issues. The occurrence of strong winds and rains due to direct hurricane force and other strong storms impact the wear and tear of poles and the attachments thereto. In these areas, the additional wind-loading caused by multiple attachers and the ever-increasing size of communications bundles (caused by overlashing) is an extremely high priority. Here, proper guying, anchoring and sound make-ready is a must to protect the pole infrastructure from catastrophic failure.

These locality-specific variances are just a few examples of why a “one-size-fits-all” approach at the federal level is wholly unrealistic and unworkable. In this area, the attaching entities are attempting to lead the Commission down a path that could have significant, and even life and property-threatening consequences – all to further their own

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<sup>37</sup> NESC, Table 232-1 fn. 26.

<sup>38</sup> See Champion Declaration, ¶ 15.



economic interests. We urge the Commission to maintain the current jurisdictional paradigm, leaving safety and reliability in the hands of local experts who will take into account the unique circumstances, topography and weather conditions when designing and maintaining their critical infrastructure.

**B. Third Party Attachments Impact The Safety And Reliability Of Utility Poles**

Some attachments argue that electric utilities routinely exaggerate or embellish the nature and frequency of third-party safety violations.<sup>39</sup> On this assertion, NRECA could not remain silent. Simply put, such a statement could not be further from the truth. NRECA fully supports the IOUs' initial comments outlining that the vast majority of safety violations are created by third-party attachments – this is not a close call at all.

As demonstrated by the data provided below, third-party safety violations are real, common, substantial, and pose a significant threat to the safety and reliability of the pole networks owned by the Cooperatives. The safety issues most commonly faced by NRECA members include, without limitation, unauthorized attachments, NESC/RUS/Member-specific safety requirement violations, and improper overloading.

**1. Unauthorized Attachments**

Unauthorized attachments are a significant problem for the Cooperatives just as they are for other electric utility pole owners. Despite the fact that Cooperatives have established permitting procedures requiring notice and approval before attaching to a pole, attachments continuously ignore the procedures in order to gain access to market faster. Getting to customers is an understandable goal. Short cutting safe practices and

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<sup>39</sup> See, e.g. Initial Comments filed by TWC, pp. 53-54.

creating hazardous conditions that jeopardize the reliability of a pole network to do so, however, is inexcusable.

**a. *Unauthorized Attachments = Stealing***

Essentially, attachers are stealing from the electric utility pole owners by not paying for pole space. CATV companies warn about the severity of attaching to their facilities without permission, making clear that it is a crime, for example:

Please contact Cox if you feel someone is receiving services without paying for them. **It is illegal to fraudulently obtain cable service by attaching a wire or device to the converter or any other company wires or equipment.** The penalties under the law include fines up to \$10,000, imprisonment or both. While in some cases we offer amnesty if the offender agrees to become a paying customer, we do find it necessary to prosecute to the fullest extent of the law. Cable theft industry-wide costs operators over \$1 billion annually and can drive up monthly costs for our honest, paying customers.<sup>40</sup>

\* \* \*

Cable television theft is the illegal interception of cable programming services without the express authorization of, or payment to, a cable television system. There are two types of cable theft, passive and active. Passive theft occurs when a consumer receives services due to faulty cable operator procedures. **Active theft occurs when someone knowingly and willfully makes an illegal physical connection to the cable system and/or attaches or tampers with equipment to allow the receipt of unauthorized services.** Active theft can occur at both a consumer or commercial level. Commercial theft usually happens in an environment where the proprietor receives financial gains from the illegal services (*i.e.* a bar or restaurant).<sup>41</sup>

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<sup>40</sup> See Cox Communications, Cable Theft, <http://www.cox.com/middleGA/help/cable/theft.asp#theft> (last visited April 22, 2008) (emphasis added).

<sup>41</sup> See Time Warner Cable, Service Policies, <http://www.timewarnercable.com/kansascity/customer/policies/theftpolicy.html> (last visited April 22, 2008) (emphasis added).

## CABLE THEFT *is a* CRIME



Yet, these same entities urge the FCC to bless their identical practice of attaching to utility poles without permission. If “illegal physical connection to [a] cable system” is a crime, making an unauthorized attachments to the utility pole is no better. Nonetheless, attachers live by the philosophy that, for them, “forgiveness” is preferable to “permission.” Now they are asking the Commission to give them an express license to steal.

The prevalence of unauthorized attachments cannot be expected to improve unless appropriate, substantial monetary penalties can be assessed to serve as a sufficient deterrent. NRECA agrees with the IOU commentators who urge the Commission to help

stop this wrong – and as explained before – unsafe practice. Certainly, CATV attachers would not sanction a rule that only charged an unauthorized user of their services the monthly fee(s) they should have paid before they were caught. It is also doubtful that either Cox or Time Warner – whose policies on theft are quoted above – would let the customer off the hook if the customer explained that the CATV companies’ delay in actually showing up for an appointment to install services is a justifiable excuse. Allowing attachers to simply pay what they should have been paying all along is a perverse incentive to continue their repeated theft of space on utility poles.

**b. *Unauthorized Attachments By-Pass Make-Ready and Create Serious Safety and Reliability Concerns.***

Time Warner Cable, Inc. (“TWC”) claims that the high number of unauthorized attachments is a result of “poor record keeping” on behalf of the utilities.<sup>42</sup> The data submitted by the IOUs in initial comments conclusively demonstrates that third-party attachers routinely bypass established permitting procedures and add instability to the poles by making unauthorized attachments. To provide the Commission with additional evidence, NRECA submits the data below.

NRECA members regularly perform pole counts and/or compliance audits in an effort to maintain safe and reliable networks, and to create accurate records depicting the status of their pole attachments.<sup>43</sup> These permitting processes and pole counting procedures are more than adequate to track who is attached to their systems. The number of unauthorized attachments and resulting violations found during these processes is astonishing. The rampant practice of attaching without permitting creates significant

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<sup>42</sup> See Initial Comments filed by TWC, pp. 54-56, 59.

<sup>43</sup> See e.g., Champion Declaration, ¶ 8; Exhibit C, Declaration of Jeff Britnell, ¶¶ 7-8; Exhibit D, Declaration of Greg Broussard, ¶¶ 6-13; Exhibit E, Declaration of Blake Pendley, ¶ 11.

safety and reliability concerns. The reason attachers bypass the process is to avoid make-ready analysis and the very necessary delays that come with ensuring attachments can be made safely. Third-party attachers are in a race to get their projects done – safety and reliability notwithstanding. Not surprisingly, because they have bypassed safety procedures, the unauthorized attachments can create significant safety problems.

The results of CEC's 2007 Pole Inventory confirmed that unauthorized attachments by third-party attachers are a significant problem.<sup>44</sup> Since CEC's last pole count (approximately 2002), an additional 3,964 CATV attachments and 2,895 Telecom attachments were found on CEC's poles.<sup>45</sup> Virtually all of these new attachments were not permitted, meaning that they were not pre-engineered to determine whether they could be made consistent with the spacing requirements.<sup>46</sup> To CEC's knowledge, the vast majority were strung up without any loading analysis to determine whether the host pole could tolerate the additional wind/ice loading.<sup>47</sup>

Joe Wheeler's 2007 Pole Count also confirmed that attachers are putting their facilities on Joe Wheeler poles without following the permit process and the requirements of the CATV License Agreement.<sup>48</sup> The Pole Count revealed over 10,197 unauthorized attachments (8,633 by cable companies and 1,564 by telecommunications companies).<sup>49</sup> Joe Wheeler even discovered that a new entity had attached to Joe Wheeler's poles

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<sup>44</sup> See Champion Declaration, ¶ 8, Tab 1.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

<sup>48</sup> See Britnell Declaration, ¶ 8.

<sup>49</sup> *Id.*

without a license agreement.<sup>50</sup> In the time period during which these attachments were made, Joe Wheeler received only approximately 200 permit requests.<sup>51</sup>

Experience tells us that the high number of third-party unauthorized attachments found by the Cooperatives is a result of attachers' top priority being fast depolyment – as opposed to the safety of their contractors, employees, customers and the general public.

## **2. Violations of NESC, RUS, and Utility-Specific Standards**

It is an unfortunate reality that the data gathered by the Members, consistent with the data previously submitted by the IOUs, shows that third-party attachers **routinely** violate NESC, RUS, and utility-specific safety standards. The pole count/compliance audit data gathered by the Members stands in sharp contrast to TWC's and others' position that it is the pole owners who are "frequently responsible for creating wholesale violations on their poles."<sup>52</sup> While it cannot reasonably be disputed that the third-parties create the vast majority of the violations, the attachers refuse to accept responsibility or make efforts to remedy such violations. Instead of citing to the Commission each and every of the thousands of attacher violations found during pole counts/audits, NRECA highlights below the most common violations found and the significant impact these violations have on the safety of the poles.

Joe Wheeler's 2007 Pole Count revealed a total of 9,327 violations (5,499 attributable to cable companies and 3,828 to telecommunications companies). Even worse, Jackson EMC's ongoing Safety Audit has revealed more than more than 106,000

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<sup>50</sup>

*Id.*

<sup>51</sup>

*Id.*

<sup>52</sup>

*See* Initial Comments filed by TWC, p. iv; Initial Comments filed by Comcast Corp., pp. 4, 25 n. 86.

violations caused by third-party attachers.<sup>53</sup> Some examples of the breakdown of violations caused by attaching entities include: 30,778 by AT&T (f/k/a BellSouth); 30,270 by Comcast CATV; 25,296 by Charter CATV; 12,490 by Windstream Phone; 4,628 by Windstream CATV. The percentages of each attacher's violations include: Comcast CATV (68%); Windstream Phone (68%); Windstream CATV (66%); Charter CATV (64%); and AT&T (39%). These safety violations include, without limitation, missing or broken anchors; improperly installed, missing or broken guy wires; failure to maintain proper ground clearance; and failure to obtain required separations.

**a. *Anchor and Guy Wire Violations***

Anchors and guy wires are critical components of the safety and reliability of a pole, and a pole line.<sup>54</sup> Poles must remain upright and straight to do their jobs. Anchors are required to, among other things, help balance the load on a pole and provide stability, ultimately helping the pole remain upright.<sup>55</sup> Guy wires, used most often in conjunction with anchors, are utilized to balance and stabilize the incredible tensions placed on poles by the various wireline attachments. The guy wires and anchors balance the tensions created by the wireline attachments pulling the pole in the direction opposite the guy wire.

The data gathered by the Members proves that significant anchor and guy wire violations are created by third-parties on their poles. For example, common problems experienced by Sumter EMC relating to anchors installed by attachers include anchors that are not large enough for the soil type; anchors that are installed too close to the pole; anchors installed too close to Sumter EMC's anchors; and anchors that are not installed

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<sup>53</sup> See Broussard Declaration, ¶ 10.

<sup>54</sup> See Declaration of Rene Smith, ¶ 7.

<sup>55</sup> *Id.*

in-line with the pull of the guy wires.<sup>56</sup> Each of these practices violates one or more of the construction specifications set forth by Sumter EMC, the NESC and/or RUS. Unlike the soil type found in other parts of the country, not to mention North Georgia, the soil found in South Georgia (Sumter EMC territory) is sandy and/or loose. Therefore, larger anchors, and different types of anchors, must be used in this soil type to maintain holding power and protect the stability of the pole. Unfortunately, Sumter EMC has found that attachers regularly install anchors that are too small to maintain holding power in the South Georgia soil.

With regard to improper installation of anchors, Sumter EMC has found that attachers often use unsuitable gas-powered or air driven impact hand tools (unsuitable for installation of large anchors required in South Georgia) in place of a derrick truck.<sup>57</sup> The common problem of attaching anchors too close to the base of the pole also affects the safety and reliability of Sumter EMC's network because this results in extreme tension on the guy wire and often leads to pole deflection (*i.e.*, causes the wooden pole to bend) and can lead to pole failure in storms.<sup>58</sup> Also, installation of anchors without observing the required five foot separation between the attacher and Sumter EMC anchors results in the pulling of both anchors upward on the same cone-shaped volume of soil, which results in a holding power for the two anchors less than would be available if the anchors were installed with sufficient separation.<sup>59</sup>

Attachers to Sumter EMC's poles also often attach to Sumter EMC's anchors without permission and without taking into account the preexisting tension on the anchor,

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<sup>56</sup> See Smith Declaration, ¶ 8.

<sup>57</sup> See Smith Declaration, ¶ 10.

<sup>58</sup> See Smith Declaration, ¶ 11.

<sup>59</sup> See Smith Declaration, ¶ 12.



as well as the holding power of the anchor in the soil.<sup>60</sup> Failure of the anchor to support the additional load imposed by the attacher's guy wire can result in catastrophic failure of the pole.<sup>61</sup> Attachers to Sumter EMC's poles often improperly install guy wires as well which compromises the safety of the pole by failing to adequately counterbalance the tension created by the CATV or ILEC wireline attachments.<sup>62</sup> Sumter EMC has attached photographs as Tab 1 to the Declaration of Rene Smith (Exhibit B) demonstrating the problems or violations caused by improperly installed anchors and guy wires.

The data gathered during Jackson EMC's Safety Audit also proves that third-party attachers create numerous anchor, guy wire and/or grounding violations.<sup>63</sup> Specifically, the Audit has revealed that Comcast CATV had 2,104 violations and Charter CATV had 1,165 violations for failure to mark guy anchors to protect the public. Furthermore, Comcast CATV had 4,004 violations due to failure to bond to the Jackson EMC-provided ground while Windstream CATV had 667 violations and Charter CATV had 5,183 violations of the same type.<sup>64</sup> As evidenced by the photographs attached to the various Member declarations, these violations can have significant effects on the condition of the poles. Guying and anchoring problems are also frequently experienced by CEC and Joe Wheeler.<sup>65</sup>

**b. *Ground Clearance and Pole Separation Violations***

Attachers also regularly create ground clearance and pole separation violations on Cooperative owned poles. For example, one byproduct of the attaching entities utilizing

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<sup>60</sup> See Smith Declaration, ¶ 13.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> See Broussard Declaration, ¶¶ 7, 12.

<sup>64</sup> See Broussard Declaration, ¶ 12.

<sup>65</sup> See Champion Declaration, ¶ 13, Tab 2 (Photos 1-2); Britnell Declaration, ¶ 10, Tab 1 (Photos 1-2).

improper anchors and guy wires is that some attached cables are unable to establish or maintain the required clearance over public highways. Sumter EMC has attached as Tab 2 to the Declaration of Rene Smith (Exhibit B) photographs showing the sag created over a major highway in Georgia due to improper installation of anchors and guy wires. The sag in this situation resulted in a tractor trailer truck striking the ILEC cable (the lowest cable on the pole).<sup>66</sup>

CEC also found substantial clearance and/or spacing violations in its 2007 Pole Count.<sup>67</sup> Specifically, over 5,311 total violations were found (3,229 CATV violations and 2,082 TELCO violations).<sup>68</sup> Stated alternatively, more than 22% of CEC's Joint Use Poles were found to have violations created by third party attachers (it should be noted that this calculation is conservative).<sup>69</sup> The Pole Inventory was limited to three categories of violations: Ground Clearance Violations, Mid-Span Separation Violations and Separation on the Poles.<sup>70</sup> Of these three categories, separation violations were the most common. Specifically, CEC found 4,045 separation violations (2,373 CATV violations and 1,672 TELCO violations).<sup>71</sup> Mid-span violations were the second most common with 1,117 violations found (748 CATV violations and 369 TELCO violations).<sup>72</sup> Finally, 149 ground clearance violations were found (108 CATV violations and 41 TELCO violations).<sup>73</sup> After receiving the results of the Pole Inventory, a few of the attaching entities questioned the findings.<sup>74</sup> In response, CEC invited all attaching

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<sup>66</sup> See Smith Declaration, ¶¶ 17-18, Tab 2.

<sup>67</sup> See Champion Declaration, ¶ 9.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> See Champion Declaration ¶ 9, Tab 3.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> See Champion Declaration, ¶ 11.

entities to participate in a quality control cross-check.<sup>75</sup> Six of the CATV attachers sent representatives to ride the line with CEC; each agreed that the contractors' findings were accurate within an acceptable tolerance of +/- 2%.<sup>76</sup> The attachers all agreed to work on remedying the violations within a twelve month period of time.<sup>77</sup>

Jackson EMC's findings were consistent with Sumter EMC's and CEC's findings. Jackson EMC has found significant spacing violations in its Safety Audit begun in 2000. For example, the Safety Audit has revealed the following common spacing violations: violations of the 40" spacing required below a secondary/transformer loop (9,404 violations by AT&T, 6,028 violations by Charter CATV, 7,596 violations by Comcast CATV, 2,586 violations by Windstream Phone, and 844 violations by Windstream CATV); violations of the 40" spacing required below an energized secondary wire (5,158 violations by AT&T, 3,731 violations by Charter CATV, 3,672 violations by Comcast CATV, 1,626 violations by Windstream Phone, and 476 violations by Windstream CATV); violations of the 15.5' required clearance over roads and driveways (3,075 violations by AT&T); violations of the 40" required spacing below a riser (1,794 violations by AT&T); and violations of the 30" required separation below a transformer tank (1,959 violations by AT&T, 1,727 violations by Comcast CATV, 1,286 violations by Charter CATV, and 825 violations by Windstream Phone).<sup>78</sup>

In addition, GreyStone Power is currently conducting a system-wide safety audit to identify and correct safety violations.<sup>79</sup> This initial audit is only identifying the most obvious safety violations – *i.e.* those which can be identified simply by looking at the

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<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.*

<sup>78</sup> See Broussard Declaration, ¶ 12.

<sup>79</sup> See Pendley Declaration, ¶ 11.

poor construction practices of attachers without having to resort to measuring the attachments.<sup>80</sup> To date approximately 17,000 joint use poles have been surveyed, with more than 3,100 obvious CATV or ILEC violations discovered.<sup>81</sup> Attached as Tabs 1–4 to the Declaration of Blake Pendley (Exhibit E) are four very recent Pole Reports created in February–April 2008.<sup>82</sup> Each of these reports identify examples of the types of pervasive safety violations created by CATV and ILEC attachers on GreyStone Power’s joint use poles – some of which require attachers to lower their attachments three (3) feet.<sup>83</sup>

As evidenced by the data submitted in these comments, as well as that submitted by the IOU’s in the initial comments, third-party attachers create significant safety violations on a routine basis. The Commission should not be misguided by the claims made by CATVs and ILECs that such violations are not a substantial problem facing the joint-use industry.

### **3. Overlashing Creates Significant Burdens on Poles**

Contrary to the claims made by the ILECs and CATVs in the initial comments that overlashing causes no problems, overlashing presents a new burden on the poles which raises safety, reliability, capacity and engineering concerns.<sup>84</sup> Experience shows that despite safety concerns and the almost universal contractual requirement that attachers provide the pole owners with notice prior to overlashing, attachers continue to overlash without prior notification. This creates significant concerns for Cooperatives, including the Members, because it removes their ability to ensure prior to overlashing (1)

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<sup>80</sup> *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> See Pendley Declaration, ¶¶ 6–10, Tabs 1–4.

<sup>83</sup> *Id.*

<sup>84</sup> See Initial Comments filed by TWC, p. 17–18.

that the pole has no existing violations which may endanger the contractors performing the overlashing projects and (2) that the pole is in the requisite condition to accommodate the proven increased burden caused by overlashing.

The additional cables and/or wires routinely overlashed by CATV or other attachers usually contain dozens of strands of optical fiber. This results in a significant increase in the bundle size and the overall weight of the attachments. The additional burden on the pole is further impacted when you combine the increased weight and surface area with the impact of wind and ice loading. This increases both the vertical pole load and the tension on the installed anchors and guy wires.<sup>85</sup> All of this additional tension and load must be accounted to maintain a properly engineered and safe pole. Of course, if the overlasher provides no notification of their work, that safety analysis cannot be done.

Many, if not all, of the Members' contracts require attachers to provide advance notice of overlashing.<sup>86</sup> For example, CEC requires information concerning the weight, tension, strength of the support messenger, and size of the attachments.<sup>87</sup> This information allows CEC to work with the attacher to ensure that the pole can withstand the load of the overlash, taking into account all factors (including, without limitation, the additional wind and ice loading).<sup>88</sup> In CEC's experience, overlash bundles are getting bigger and bigger and the safety and reliability of the network depends on knowing exactly what additional burden is being placed on the poles.<sup>89</sup> The photographs attached as Tab 2 (Pictures 3–6) to the declaration of CEC's Bert Champion (Exhibit A)

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<sup>85</sup> See Smith Declaration, ¶ 14.

<sup>86</sup> See e.g., Champion Declaration, ¶ 18.

<sup>87</sup> *Id.*

<sup>88</sup> *Id.*

<sup>89</sup> *Id.*

demonstrate the consequences of overloading done without making the appropriate make-ready decisions, and the dangers posed by failed overloading.<sup>90</sup> The photographs submitted as Tab 1 to the declaration of Joe Wheeler's Jeff Britnell (Exhibit C) also provide photographic evidence of the dangerous conditions overloading creates, as well as the impact on the condition of the pole.

The process of overloading without notification seriously threatens the reliability of Cooperatives' poles, and creates safety conditions for those individuals working on the poles as well as the general public. NRECA fully supports the initial comments filed by the IOUs outlining why pole owners must be able to require notification prior to overloading in order to maintain a safe and reliable network.

### **CONCLUSION**

NRECA appreciates the opportunity to file these Reply Comments on the myriad of issues to be addressed in the NPRM. In particular, we hope that we have given the Commission insight regarding to the potential detrimental impact the adoption of uniform safety and reliability "best practices" could have on NRECA, its members and other electric utility pole owners. NRECA respectfully requests that the Commission reject the attachers' request to adopt such practices. The economic motives of CATV and telecommunications attachers should not be placed ahead of the safety and reliability of electric distribution networks. We all enjoy the developments that have been made over the years in television and communications, and broadband deployment is a laudable public good. However, without reliable electric distribution networks, America will be unable to effectively use advanced communication services. Stated simply, in the area of

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<sup>90</sup> *Id.*

safety and reliability, the Commission should maintain the *status quo* and leave these issues to those who have the expertise and jurisdiction to handle them.

Respectfully submitted,

NATIONAL RURAL ELECTRIC  
COOPERATIVE ASSOCIATION

By: Wallace F. Tillman /s/  
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Vice President, Energy Policy & General  
Counsel

David N. Predmore /s/  
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Arlington, VA 22203-1860  
703-907-5848

April 22, 2008

# EXHIBIT A



**Before the  
Federal Communications Commission  
Washington, D.C., 20554**

In the Matter of	)	
	)	
Implementation of Section 224 of the Act;	)	WC Docket No. 07-245
Amendment of the Commission's Rules and	)	
Policies Governing Pole Attachments	)	RM-11293
	)	RM-11303
	)	

**DECLARATION OF BERT CHAMPION**

1. My name is Bert Champion. I am currently employed by Covington Electric Cooperative, Inc. ("CEC") as Technical Services Manager. In this capacity, I am CEC's main contact regarding third party attachments to CEC distribution poles. I have been the Technical Services Manager for CEC since 1996, and have been with the company for a total of eleven years.
  2. This declaration is based on my personal and professional knowledge, as well as knowledge available to me in my capacity as Technical Services Manager for CEC.
  3. CEC is a member-owned electric cooperative providing energy and services to rural communities in South Alabama. CEC's more than 2,600 miles of line transmits electrical service to more than 22,500 meters in parts of six counties: Covington, Coffee, Crenshaw, Dale, Geneva and Escambia.
  4. CEC is a member of the National Rural Electric Cooperative Association ("NRECA").
- I offer this declaration in support of the comments filed by NRECA in response to the FCC's Pole Attachment Notice of Proposed Rulemaking, WC Docket 07-245.

5. My declaration addresses certain specific issues impacting the safety and reliability of CEC's system, as well as CEC's experiences and data related to joint use relationships and licensed attachments.

6. CEC currently has approximately 55,000 electrical distribution poles, with more than 24,952 of those poles having at least one attachment by an ILEC, CATV or another party ("Joint Use Poles").

7. CEC is dedicated to maintaining a safe and reliable distribution network over which to deliver electricity to its members. To this end, in approximately 2005, CEC made the decision that the construction and maintenance practices of the attaching entities were unacceptable and needed to be corrected. Attaching entities were not complying with CEC's permitting process and their facilities caused frequent problems and were not compliant with NESC standards, RUS specifications or CEC construction standards and joint use specifications. CEC began the process of negotiating new pole attachment agreements to include more stringent safety obligations. CEC also negotiated the parameters of a pole inventory and compliance audit ("Pole Inventory") with the various attaching entities.

- **CEC POLE INVENTORY**

8. After years of negotiating, new agreements were reached with the 7 cable companies that attach to CEC's poles. The Pole Inventory began shortly thereafter and was concluded in September 2007. The results of the Pole Inventory confirmed that unauthorized attachments by third-party attachers are a significant problem for CEC. Since CEC's last pole count (approximately 2002), an additional 2,895 CATV attachments and 1,056 Telecom attachments were found on CEC's poles. Virtually all of these new attachments were not permitted, meaning

that they were not evaluated prior to attachment to determine whether they could be made consistent with the spacing requirements. To my knowledge, the vast majority were also not run-through a loading analysis to determine whether the host pole could tolerate the additional wind/ice loading. The results of the Pole Inventory are reflected in Tab 1 to my Declaration. Not surprisingly, these unauthorized attachments create signification problems, not to mention that the attachers had not been paying for the pole space.

9. The Pole Inventory also revealed numerous safety violations. The bulk of the violations discovered were created by third-party attachers. CEC found over 5,311 total violations. Stated alternatively, more than 21% of CEC's Joint Use Poles were found to have violations. It should be noted that this calculation is conservative. The Pole Inventory was limited to three categories of violations: Ground Clearance Violations, Mid-Span Separation Violations and Separation on the Poles. While other violations exist (some of which are captured and described in the pictures attached hereto as Tab 2), CEC is dealing with these separately. The breakdown of the 3 categories of violations by attaching entity type is reflected in Tab 3 to my Declaration.

10. The Pole Inventory was performed by Utility Support Services ("USS"). CEC paid approximately \$70,000 for USS's services. The attaching entities were included in the planning of the Pole Inventory.

11. After receiving the results of the Pole Inventory, a few of the attaching entities questioned the findings. In order to get them comfortable with the work of USS, we invited all attaching entities to participate in a quality control cross-check. Six of the CATV attachers sent representatives to ride the line with us; each agreed that USS's findings were accurate within an

acceptable tolerance of +/- 2%. The licensees all agreed to work on remedying the violations within a twelve month period of time.

- **LOCAL CONDITIONS INFLUENCE CEC SPECIFICATIONS**

12. I understand that several attaching entities have taken the position in this proceeding that the FCC should adopt a “best practices” – one size fits all – set of construction standards. Stated simply, this is a bad idea and wholly unworkable. As co-ops, our general set of construction standards take into account both the NESC standards, and the specifications set by the RUS. However, given certain local conditions we face in setting and maintaining of poles, we must enforce specifications more stringent than the baselines set by NESC and RUS.

13. By way of example, the soil in the south Alabama region we serve is very sandy. The NESC does not have a standard for separation of guy anchors. CEC, however, requires a minimum of 30” separation (or 2’6”) – much more is recommended. Given our local conditions, we must enforce a high standard. Anchors installed without the requisite distance between them will pull upward in the same cone-shaped volume of soil. If installed too close in sand, anchor failure will result. Photographs 1-2 attached at Tab 2 demonstrate the necessity of requiring stringent standards regarding the separation of guy anchors. Anchor failure can result in pole deflection and ultimate failure, particularly under storm loading conditions

14. As a second example, the NESC requires 15’5” roadway clearance. In South Alabama, we have an inordinate number of overloaded log trucks. We also have an ever-increasing number of over-sized farm machinery (e.g., cotton combines and peanut pickers). CEC has experienced several instances where these mainstays in our local economy have pulled down

poles that have clearance adequate to meet NESC and RUS standards. As a result, we must enforce a pragmatic higher standard.

15. As a final example, the NESC has a general rule that communications attachments must be 40" from the power facilities. There are a few exceptions in the NESC that reduce this distance, e.g., 30" from the bottom of a transformer and 12" from the bottom of a street light drip loop. Given our experience with local contractors, and the severe consequences of a mishap, our contract is more stringent:

All of Licensees Attachments shall comply with the more stringent of either OWNER's or NESC clearance and separation requirements and shall be located a minimum of forty (40) inches below OWNER's lowest attached facilities. All mid-span clearances between Licensee's facilities and OWNER'S lowest conductors shall comply with NESC clearance requirements.

16. In my opinion, there is no way a uniform set of specifications would work in a single state, much less on a national basis.

- **CATV Overlashing Practices are a Problem**

17. I understand that several CATV attachers are suggesting that they should be allowed to utility poles without notice to the pole owner. In my experience, this is another very bad idea.

18. Our contract requires all attachers to give us advance notice of overlashing. We require information concerning the weight, tension, strength of the support messenger, and size of the Attachments. This information allows us to work with the attacher to ensure that the pole can withstand the load of the overlash, taking into account all factors (including, without limitation, the additional wind and ice loading). Overlash bundles are getting bigger and bigger and the safety and reliability of our network depends on it. Pictures 3-6 in Tab 3 hereto demonstrate the

consequences of overloading without making the appropriate make-ready decisions and the dangers posed by failed overloading.

19. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the facts set forth in this declaration are true to the best of my knowledge.

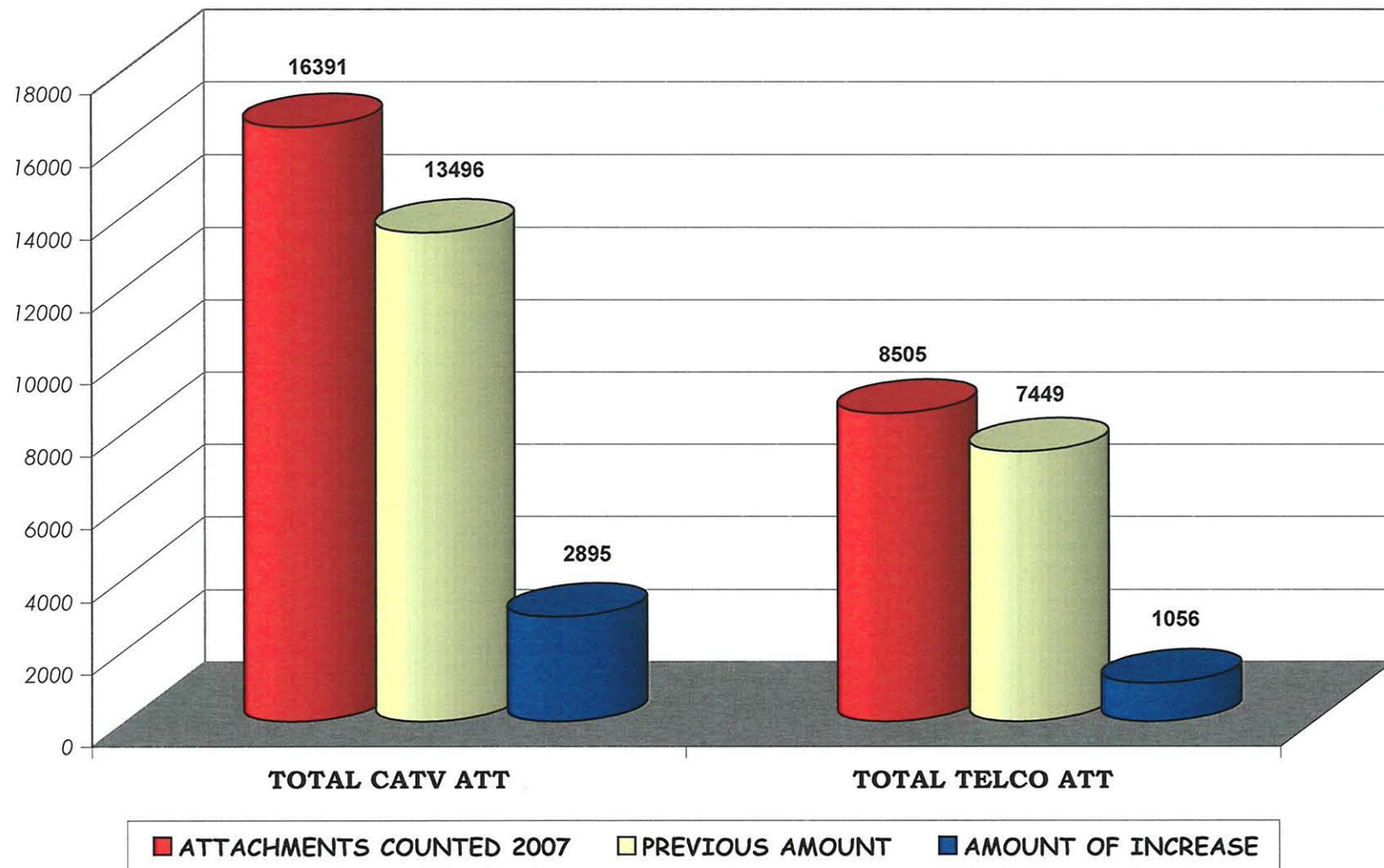
Executed on the 22<sup>nd</sup> day of April, 2008.

A handwritten signature in cursive script, appearing to read "Bert Champion", is written over a horizontal line.

Bert Champion  
Technical Services Manager, Covington Electric  
Cooperative

**TAB 1**

## TELCO vs. CATV ATTACHMENTS





**TAB 2**



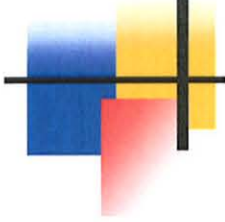
# Pictures In Support of Bert Champion Declaration

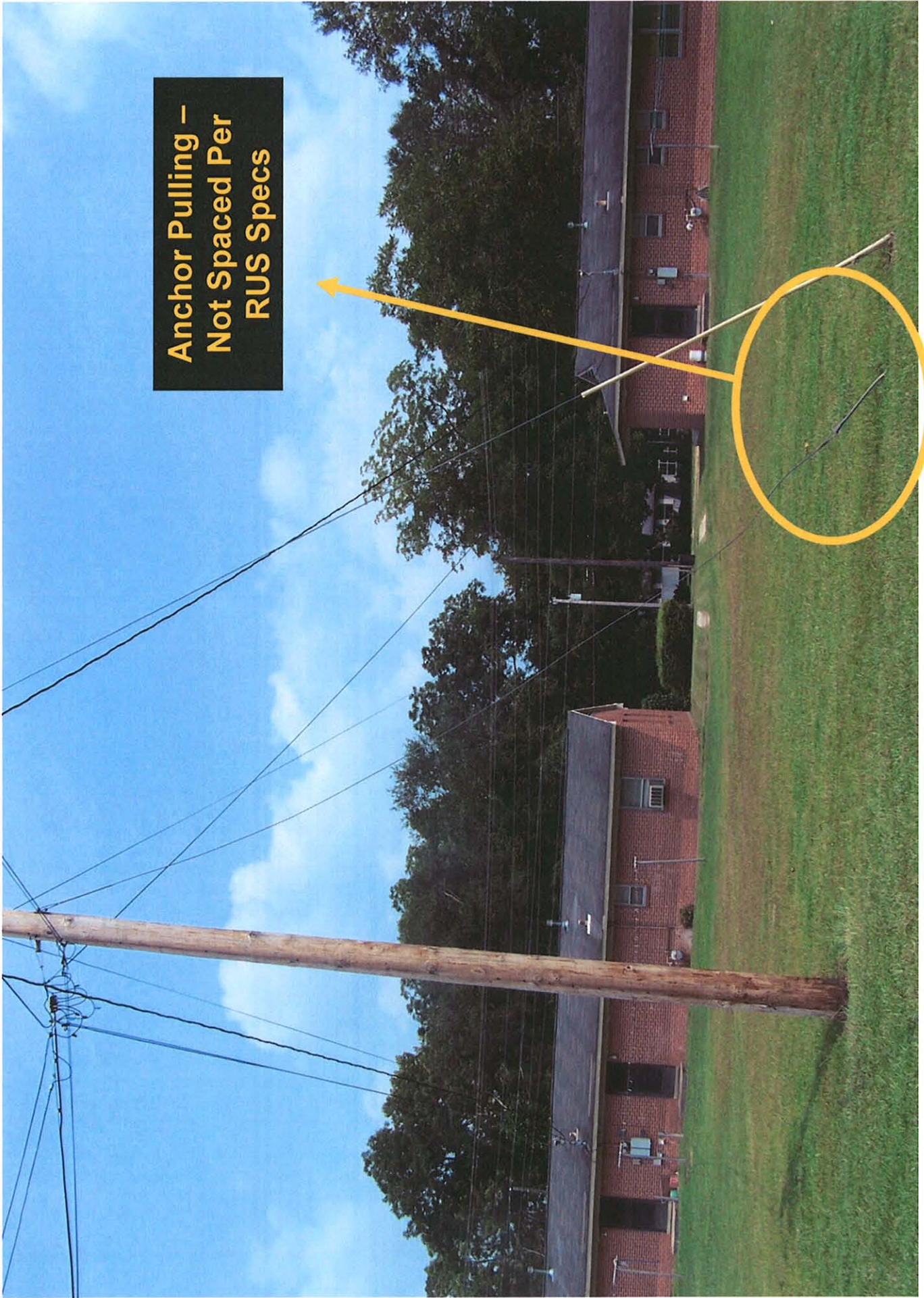
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- Submitted in Support of Comments filed by NRECA

April 22, 2008

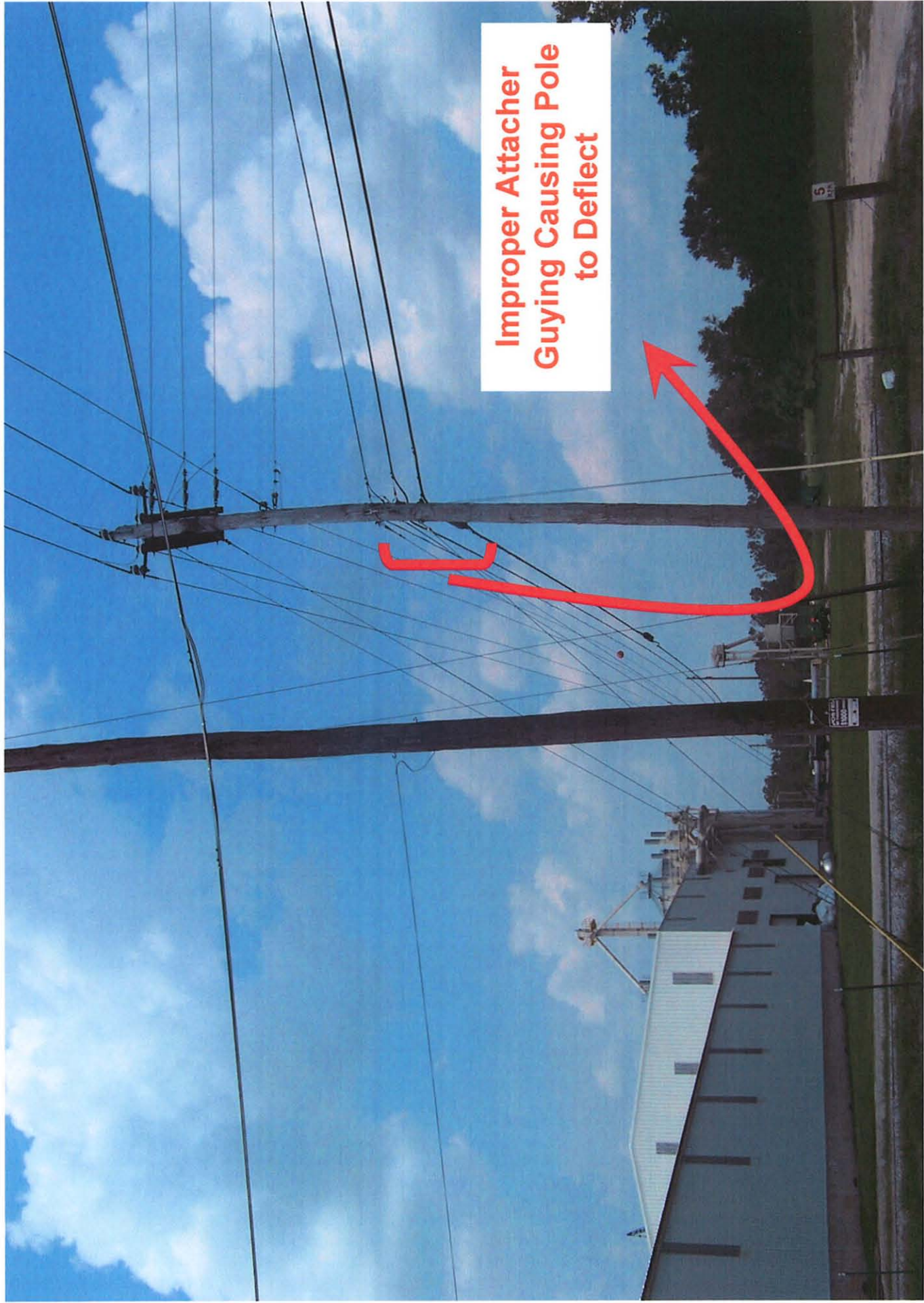
# Guying and Anchoring Problems





Anchor Pulling -  
Not Spaced Per  
RUS Specs





**Improper Attacher  
Guying Causing Pole  
to Deflect**